
Nanda Khakhariya Vs Sharad Shukla And Ors

Criminal Revision No. 937 Of 2017

Court: Chhattisgarh High Court

Date of Decision: Sept. 27, 2019

Acts Referred:

Indian Penal Code, 1860 " Section 21, 120B, 409, 420#Prevention Of Corruption Act, 1988
" Section 13(1)#Companies Act, 1956 " Section 617

Hon'ble Judges: Rajani Dubey, J

Bench: Single Bench

Advocate: Parag Kotecha, Yash Mourya

Final Decision: Dismissed

Judgement

Rajani Dubey, J

01. Challenge in the revision petition is to the order dated 11.08.2017 passed by learned Special Judge (Prevention of Corruption Act), Dhamtari,

whereby the learned Special Judge has rejected the complaint filed by the petitioner against respondents under Sections 409, 420/120-B IPC and

Section 13(1) of Prevention of Corruption Act (for short 'the P.C. Act').

02. Brief facts of the case are that the applicant filed a criminal complaint against the respondents for registration of offence under Sections 409, 420,

120-B IPC and Section 13(1) of the P.C. Act interalia, pleading that respondent Nos. 1, 2 and 3 in the capacity of President, Secretary and Chairman

of the Chhattisgarh Table Tennis Association respectively, misappropriate the fund received from the State Government for organising the competition

of table tennis. It has been further pleaded that respondents misusing their powers, banned the entry of complainant and her husband in the premises

of ground where their children also play. The respondents just to debar the son of the applicant, prepared false documents with regard to date of birth

and because of this her son could not participate at National Level Competition. The applicant examined four witnesses in support of complaint and

filed various documents. The learned Special Court, vide order dated 11.08.2017, dismissed the complaint on the ground that since the respondents do

not fall within the definition of public servant, no offence under the provision of P.C. Act is made out. Hence, this revision.

03. Learned counsel for the applicant submits that the respondents have misappropriated the public money meant for development of table tennis in

the State of Chhattisgarh. He further submits that the complainant filed sufficient material to prove the irregularity being committed by the

respondents, but the learned trial Court dismissed the complaint of the applicant only on the ground that original documents/certified copies have not

been produced in the case. He also submits that when the learned trial Court found that the case is not triable by Special Judge, it should have been

transferred the case to the competent court having jurisdiction to try this. The impugned order being not in accordance with law may be set aside. In

support of his argument, he placed reliance on the decisions of Supreme Court in the matter of Central Bureau of Investigation, Bank Securities and

Fraud Cell and others V. Ramesh Gelli and others (2016) 3 SCC 788 Ā, and State of Rajasthan V. Fatehkaran Mehdu AIR 2017 SC 796 .

04. On the other hand, learned counsel for the respondents supported the impugned judgment.

05. Heard learned counsel for the parties and perused the material on record.

06. From the record, it is clear that respondent No.1 and 2 are the President and Secretary of Chhattisgarh Table Tennis Association respectively, and

the allegation levelled against them by the applicant is that they have misused the fund/public money allotted to them by the State Government. It is

also apparent that the complaint was filed on 27.10.2015 and the learned Special Judge sought report from the Anti Corruption Bureau, Raipur, which

it has filed before learned Special Judge on 21.12.2015. The report of Anti Corruption Bureau, Raipur, shows that there exists no suitable and

sufficient ground to investigate the matter by the Anti Corruption Bureau and that the respondents do not fall within the definition of public servant.

The question to be considered is whether the respondents are covered under the definition of public servant or not. Section 21 of IPC speaks with the

definition of public servant, which is reproduced herein below:

21. "Public servant".--The words "public servant" denote a person falling under any of the descriptions hereinafter following; namely:-- [***] (Second)

-- Every Commissioned Officer in the Military, 3 [Naval or Air] Forces 4[***] of India];

6[(Third) -- Every Judge including any person empowered by law to discharge, whether by himself or as a member of any body of persons, any

adjudicatory functions;] (Fourth) -- Every officer of a Court of Justice 7 [(including a liquidator, receiver or commissioner)] whose duty it is, as such

officer, to investigate or report on any matter of law or fact, or to make, authenticate, or keep any document, or to take charge or dispose of any

property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order in the Court, and every person specially

authorized by a Court of Justice to perform any of such duties;

(Fifth) -- Every juryman, assessor, or member of a panchayat assisting a Court of Justice or public servant;

(Sixth) -- Every arbitrator or other person to whom any cause or matter has been referred for decision or report by any Court of Justice, or by any

other competent public authority;

(Seventh) -- Every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;

(Eighth) -- Every officer of 1 [the Government] whose duty it is, as such officer, to prevent offences, to give information of offences, to bring

offenders to justice, or to protect the public health, safety or convenience;

(Ninth) -- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of 1 [the Government], or to make

any survey, assessment or contract on behalf of 1 [the Government], or to execute any revenue process, or to investigate, or to report, on any matter

affecting the pecuniary interests of 1 [the Government], or to make, authenticate or keep any document relating to the pecuniary interests of 1 [the

Government], or to prevent the infraction of any law for the protection of the pecuniary interests of 1 [the Government] 2 [***];

(Tenth) -- Every officer whose duty it is, as such officer, to take, receive, keep or expend any property, to make any survey or assessment or to levy

any rate or tax for any secular common purpose of any village, town or district, or to make, authenticate or keep any document for the ascertaining of

the rights of the people of any village, town or district; 3 [(Eleventh) --Every person who holds any office in virtue of which he is empowered to

prepare, publish, maintain or revise an electoral roll or to conduct an election or part of an election;] 32 [(Twelfth) --Every person--

(a) in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government;

(b) in the service or pay of a local authority, a corporation established by or under a Central, Provincial or State Act or a Government company as

defined in section 617 of the Companies Act, 1956 (1 of 1956).]

07. Furthermore, on 29.06.2017, the learned Special Judge directed the applicant to submit documents which could prove the fact that respondents

come within the definition of public servant. The learned Special Judge recorded its finding on the basis of documents so supplied by the applicant that

the documents submitted by the applicant are photocopy and not certified copies and it would not be possible for it to come to a conclusion on the basis

of documents supplied by the applicant that the case is covered under Prevention of Corruption Act and also recorded that this Court is Special Court

to try the cases relating to Corruption only. That apart, the Special Court also recorded its finding that the applicant herself has given written

submission on 23.02.2017 stating therein that the accused persons are the officers of Sport Association, which are not being appointed by the State

Government, they get no salary from the State Government, they do not fall within the definition of Public Servant and dismissed the complaint of the

applicant with liberty to file criminal complaint before the competent Court. This Court also finds from Section 21 IPC and the material adduced by the

complainant that the respondents do not fall within the definition of Public Servant. The order passed by the learned Special Judge is well reasoned

order, which do not call for any interference by this Court.

08. In the result, the revision has no substance and the same is liable to be and is hereby dismissed at the motion stage itself. However, the applicant is

granted liberty to file appropriate application before the competent Court.